

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-01513-CKK**

JAMES MADISON PROJECT et al v. DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Assigned to: Judge Colleen Kollar-Kotelly
Cause: 05:552 Freedom of Information Act

Date Filed: 06/26/2018
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

JAMES MADISON PROJECT

represented by **Bradley Prescott Moss**
LAW OFFICES OF MARK S. ZAID,
P.C.
1250 Connecticut Avenue, NW
Suite 700
Washington, DC 20036
(202) 454-2809
Fax: (202) 330-5610
Email: brad@markzaid.com
ATTORNEY TO BE NOTICED

Plaintiff

NOAH SHACHTMAN

represented by **Bradley Prescott Moss**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

SAM STEIN

represented by **Bradley Prescott Moss**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

represented by **Fred Elmore Haynes**
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2550
Email: fred.haynes@usdoj.gov
TERMINATED: 06/27/2019
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John Cuong Truong
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2524
Fax: (202) 252-2599
Email: john.truong@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Doris Denise Coles-Huff
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA

555 Fourth Street, NW
 Washington, DC 20530
 (202) 252-2557
 Fax: (202) 252-2599
 Email: doris.coles@usdoj.gov
 TERMINATED: 03/05/2019

Date Filed	#	Docket Text
06/26/2018	<u>1</u>	COMPLAINT against DEPARTMENT OF HEALTH AND HUMAN SERVICES (Filing fee \$ 400 receipt number 0090-5555536) filed by THE JAMES MADISON PROJECT, SAM STEIN, NOAH SHACHTMAN. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibit Rule 7.1 certification, # <u>3</u> Summons HHS, # <u>4</u> Summons USADC, # <u>5</u> Summons USAG)(Moss, Bradley) (Entered: 06/26/2018)
06/26/2018	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by JAMES MADISON PROJECT (zsth) (Entered: 06/28/2018)
06/27/2018		Case Assigned to Judge Colleen Kollar-Kotelly. (zsb) (Entered: 06/27/2018)
06/28/2018	<u>3</u>	SUMMONS (3) Issued Electronically as to DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Notice and Consent)(zsth) (Entered: 06/28/2018)
07/02/2018	<u>4</u>	ORDER ESTABLISHING PROCEDURES FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR-KOTELLY. Signed by Judge Colleen Kollar-Kotelly on 7/2/18. (DM) (Entered: 07/02/2018)
07/19/2018	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF HEALTH AND HUMAN SERVICES served on 7/3/2018 (Attachments: # <u>1</u> Exhibit HHS receipt)(Moss, Bradley) (Entered: 07/19/2018)
07/19/2018	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 07/02/2018. (Attachments: # <u>1</u> Exhibit USAG receipt)(Moss, Bradley) (Entered: 07/19/2018)
07/19/2018	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/2/2018. Answer due for ALL FEDERAL DEFENDANTS by 8/1/2018. (Attachments: # <u>1</u> Exhibit USADC receipt)(Moss, Bradley) (Entered: 07/19/2018)
07/30/2018	<u>8</u>	MOTION for Leave to File <i>First Amended Complaint</i> by JAMES MADISON PROJECT, NOAH SHACHTMAN, SAM STEIN (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit 1 – First Amended Complaint, # <u>3</u> Text of Proposed Order)(Moss, Bradley) (Entered: 07/30/2018)
07/31/2018		MINUTE ORDER. The Court is in receipt of Plaintiffs' <u>8</u> Motion for Leave to File First Amended Complaint. Plaintiffs move to amend their complaint to add a claim for the production of records responsive to their FOIA request. Plaintiffs' original claim was limited to the legal issue of expedited processing. The underlying FOIA request remains the same, and no other substantive changes are proposed. Given that this case is still in its very earliest stages, that Defendant has not yet filed an Answer or otherwise appeared in this case, that the proposed amendment is a fairly narrow one, and that this is Plaintiffs' first motion to amend, the Court will GRANT Plaintiffs' motion. The Clerk of the Court shall file Plaintiffs' First Amended Complaint on the docket. Defendant shall respond to Plaintiffs' First Amended Complaint by no later than AUGUST 14, 2018. Signed by Judge Colleen Kollar-Kotelly on 7/31/2018. (lcckk3) (Entered: 07/31/2018)
07/31/2018		Set/Reset Deadlines: Answer to Amended Complaint due by 8/14/2018. (dot) (Entered: 08/01/2018)
07/31/2018	<u>10</u>	First AMENDED COMPLAINT against DEPARTMENT OF HEALTH AND HUMAN SERVICES filed by JAMES MADISON PROJECT, SAM STEIN, NOAH SHACHTMAN.(ztd) (Entered: 08/02/2018)

08/01/2018	<u>9</u>	ANSWER to Complaint by DEPARTMENT OF HEALTH AND HUMAN SERVICES.(Haynes, Fred) (Entered: 08/01/2018)
08/14/2018	<u>11</u>	ANSWER to <u>10</u> Amended Complaint by DEPARTMENT OF HEALTH AND HUMAN SERVICES.(Haynes, Fred) (Entered: 08/14/2018)
08/15/2018	<u>12</u>	ORDER. The parties shall file a Joint Status Report by no later than SEPTEMBER 5, 2018. Signed by Judge Colleen Kollar-Kotelly on 8/15/2018. (lcckk3) (Entered: 08/15/2018)
08/15/2018		Set/Reset Deadlines: Joint Status Report due by 9/5/2018. (dot) (Entered: 08/16/2018)
09/07/2018		MINUTE ORDER. On August 15, 2018, the Court ordered parties to file a Joint Status Report by September 5, 2018. Parties have failed to do so. The Court ORDERS parties to submit their Joint Status Report by SEPTMEBER 10, 2018. Signed by Judge Colleen Kollar-Kotelly on 9/07/2018. (lcckk3,) (Entered: 09/07/2018)
09/10/2018	<u>13</u>	Joint STATUS REPORT by DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Haynes, Fred) (Entered: 09/10/2018)
09/11/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>13</u> Joint Status Report. The parties informed the Court that Defendant has granted expedited processing of Plaintiff's FOIA request, but an additional two weeks are required to determine how soon Defendant can respond substantively to the request. The Court ORDERS parties to file a Joint Status Report by SEPTEMBER 24, 2018 informing the Court of Defendant's progress in responding to Plaintiff's FOIA request. Signed by Judge Colleen Kollar-Kotelly on 9-11-2018. (lcckk3) (Entered: 09/11/2018)
09/11/2018		Set/Reset Deadlines: Joint Status Report due by 9/24/2018. (dot) (Entered: 09/11/2018)
09/24/2018	<u>14</u>	Joint STATUS REPORT by DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Haynes, Fred) (Entered: 09/24/2018)
09/24/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>14</u> Joint Status Report. The parties informed the Court that Defendant has granted expedited processing of Plaintiff's FOIA request, but additional time is needed to determine how soon Defendant can finish responding to the FOIA request. The parties are ORDERED to file a further Joint Status Report by no later than OCTOBER 24, 2018, updating the Court on the status of Defendant's processing of Plaintiff's FOIA request. The parties are further ORDERED to file additional Joint Status Reports every 30 days thereafter. The parties are also free to file Joint Status Reports between the filing deadlines if issues arise that require the Court's attention. Signed by Judge Colleen Kollar-Kotelly on 9-24-2018. (lcckk3) (Entered: 09/24/2018)
09/24/2018		Set/Reset Deadlines: Joint Status Report due by 10/24/2018. (kt) (Entered: 09/24/2018)
10/24/2018	<u>15</u>	Joint STATUS REPORT by DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Haynes, Fred) (Entered: 10/24/2018)
10/25/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>15</u> Third Joint Status Report. The parties inform the Court that Defendant has gathered all records relating to Plaintiff's FOIA request for communications among and between officials of HHS and other government officials and/or local government officials in Texas regarding the creation of "tent cities" for unaccompanied migrant children. The parties report that they are working together to prioritize the order in which the records are searched. The Court ORDERS the parties to file a joint status report by NOVEMBER 7, 2018 addressing a production schedule for responsive records. Signed by Judge Colleen Kollar-Kotelly on 10-25-2018. (lcckk3) (Entered: 10/25/2018)
10/25/2018		Set/Reset Deadlines: Joint Status Report due by 11/7/2018. (dot) (Entered: 10/26/2018)
11/07/2018	<u>16</u>	Joint STATUS REPORT (<i>Fourth</i>) by DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Haynes, Fred) (Entered: 11/07/2018)
11/08/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>16</u> Fourth Joint Status Report. The parties inform the Court that Defendant has responded to Plaintiff's FOIA

		request for records on the "final legal and/or policy determinations regarding the creation of the 'tent cities'" for unaccompanied migrant children. But, Plaintiff has not yet received the response. The parties further report that Defendant has gathered all records relating to Plaintiff's FOIA request for communications among and between officials of HHS and other government officials and/or local government officials in Texas regarding the creation of "tent cities" for unaccompanied migrant children. The first production of responsive records for the second FOIA request will be made on November 9, 2018, consisting of approximately 500 pages of responsive records. The parties report that they are working together to focus the review of records. The Court ORDERS the parties to file a Joint Status Report by DECEMBER 7, 2018 addressing a production schedule for responsive records. Signed by Judge Colleen Kollar-Kotelly on 11/8/2018. (lcckk3) (Entered: 11/08/2018)
11/08/2018		Set/Reset Deadlines: Joint Status Report due by 12/7/2018. (dot) (Entered: 11/13/2018)
12/07/2018	<u>17</u>	Joint STATUS REPORT by DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Haynes, Fred) (Entered: 12/07/2018)
12/10/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>17</u> Fifth Joint Status Report. The parties report that Defendant has made a further production of records to Plaintiff in accordance with the rolling production schedule. The Court ORDERS that the parties file another Joint Status Report on JANUARY 7, 2019, providing the Court with an overview of Defendant's response to Plaintiff's FOIA request. Signed by Judge Colleen Kollar-Kotelly on 12/10/2018. (lcckk3) (Entered: 12/10/2018)
12/10/2018		Set/Reset Deadlines: Joint Status Report due by 1/7/2019. (kt) (Entered: 12/10/2018)
01/15/2019		MINUTE ORDER. The parties were ordered to file a Joint Status Report by January 7, 2019. As of this date, the Court has not received the parties' Joint Status Report. The Court ORDERS the parties to file their report by JANUARY 22, 2019. Signed by Judge Colleen Kollar-Kotelly on 1-15-2019. (lcckk3) (Entered: 01/15/2019)
01/15/2019		Set/Reset Deadlines: Joint Status Report due by 1/22/2019. (dot) (Entered: 01/16/2019)
01/22/2019	<u>18</u>	MOTION to Stay by DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Coles-Huff, Doris) (Entered: 01/22/2019)
01/22/2019		MINUTE ORDER. The Court is in receipt of Defendant's <u>18</u> Motion for a Stay of Further Proceedings in Case Due to Lapse of Appropriations. As of December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations lapsed. Absent an appropriation, Department attorneys are prohibited from working except in situations which do not apply to this case. Defendant requests that this action be stayed during the lapse in appropriations and that the Court extend the deadline for filing a Joint Status Report to 14 days after the restoration of appropriations. Defendant reports that Plaintiff takes no position on this motion. Defendant's motion is GRANTED. The case is STAYED pending the restoration of appropriations, and the parties are ORDERED to file a Joint Status Report within 14 days of the restoration of appropriations. Defendant has not indicated whether the agency personnel responsible for processing Plaintiff's FOIA request have been deemed essential. To the extent that those agency personnel have been deemed essential, they should continue to process Plaintiff's FOIA request during the pendency of the lapse in appropriations so that, upon restoration of funding, the Joint Status Report may be submitted more promptly. Signed by Judge Colleen Kollar-Kotelly on 1/22/2019. (lcckk3) (Entered: 01/22/2019)
02/14/2019	<u>19</u>	Joint STATUS REPORT by DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Haynes, Fred) (Entered: 02/14/2019)
02/15/2019		MINUTE ORDER. The Court is in receipt of the Parties' <u>19</u> Sixth Joint Status Report. The parties report that Defendant has made further rolling productions and that the parties will soon be conducting a telephonic meet and confer to discuss issues related to further production. The parties are ORDERED to file another Joint Status Report on FEBRUARY 28, 2019, advising the Court of the status of the case. Signed by Judge Colleen Kollar-Kotelly on 2-15-2019. (lcckk3) (Entered: 02/15/2019)

02/15/2019		Set/Reset Deadlines: Joint Status Report due by 2/28/2019, advising the Court of the status of the case. (dot) (Entered: 02/19/2019)
03/05/2019		MINUTE ORDER. On February 15, 2019, the Court ordered the parties to file a Joint Status Report by February 28, 2019 advising the Court on the status of this case. As of this date, the Court has not received the parties' Joint Status Report. The Court ORDERS the parties to file their Joint Status Report by no later than MARCH 11, 2019. Signed by Judge Colleen Kollar-Kotelly on 3/5/2019. (lcckk3) (Entered: 03/05/2019)
03/05/2019		Set/Reset Deadlines: Joint Status Report due by 3/11/2019. (dot) (Entered: 03/05/2019)
03/05/2019	<u>20</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to DEPARTMENT OF HEALTH AND HUMAN SERVICES. Attorney Doris Denise Coles-Huff terminated. (Coles-Huff, Doris) (Entered: 03/05/2019)
03/11/2019	<u>21</u>	Joint STATUS REPORT by DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Haynes, Fred) (Entered: 03/11/2019)
03/12/2019		MINUTE ORDER. The Court is in receipt of the parties' <u>21</u> Seventh Joint Status Report. Defendant reports that it has completed its review of records and has released to Plaintiff responsive records not otherwise exempt from release under FOIA. The parties are ORDERED to file a Joint Status Report by March 25, 2019 proposing a briefing schedule, if such briefing is determined to be necessary. Signed by Judge Colleen Kollar-Kotelly on 3/12/2019. (lcckk3) (Entered: 03/12/2019)
03/12/2019		Set/Reset Deadlines: Joint Status Report due by 3/25/2019, proposing a briefing schedule, if such briefing is determined to be necessary. (dot) (Entered: 03/12/2019)
03/25/2019	<u>22</u>	Joint STATUS REPORT and <i>Proposed Briefing Schedule</i> by DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Haynes, Fred) (Entered: 03/25/2019)
03/26/2019		MINUTE ORDER. The Court is in receipt of the parties' <u>22</u> Eighth Joint Status Report. In keeping with the parties' proposed schedule, the Court ORDERS Defendant to file its Motion for Summary Judgment by JUNE 25, 2019; Plaintiff to file its Response to that Motion by JULY 25, 2019; and Defendant to file its Reply in support of its Motion by AUGUST 8, 2019. Signed by Judge Colleen Kollar-Kotelly on 3/26/2019. (lcckk3) (Entered: 03/26/2019)
03/26/2019		Set/Reset Deadlines: Defendant's Summary Judgment Motion due by 6/25/2019. Response to Motion for Summary Judgment due by 7/25/2019. Reply to Motion for Summary Judgment due by 8/8/2019. (dot) (Entered: 03/27/2019)
06/23/2019	<u>23</u>	Consent MOTION for Extension of Time to File <i>Defendant's Motion for Summary Judgment</i> by DEPARTMENT OF HEALTH AND HUMAN SERVICES (Haynes, Fred) (Entered: 06/23/2019)
06/24/2019		MINUTE ORDER. The Court is in receipt of Defendant's <u>23</u> Consent Motion for an Extension of Time to File Defendant's Motion for Summary Judgment. Defendant's Motion is currently due June 25, 2019, but Defense counsel is retiring June 30, 2019 and must arrange for the transfer of cases to other attorneys. Additionally, as the result of miscommunication, agency counsel was not aware of the deadline for the Motion for Summary Judgment. As such, a brief extension is required. Defendant's Motion is GRANTED. Defendant is ORDERED to file its Motion for Summary Judgment by JULY 15, 2019; Plaintiff its Response by AUGUST 14, 2019; and Defendant its Reply by AUGUST 28, 2019. Signed by Judge Colleen Kollar-Kotelly on 6/24/2019. (lcckk3) (Entered: 06/24/2019)
06/24/2019		Set/Reset Deadlines: Defendant's Motion for Summary Judgment due by 7/15/2019; Plaintiff's Response due by 8/14/2019; Defendant's Reply due by 8/28/2019. (kt) (Entered: 06/24/2019)
06/27/2019	<u>24</u>	NOTICE OF SUBSTITUTION OF COUNSEL by John Cuong Truong on behalf of All Defendants Substituting for attorney Fred Haynes (Truong, John) (Entered: 06/27/2019)

07/09/2019	<u>25</u>	Consent MOTION for Extension of Time to <i>File Motion for Summary Judgment</i> by DEPARTMENT OF HEALTH AND HUMAN SERVICES (Truong, John) (Entered: 07/09/2019)
07/09/2019		MINUTE ORDER. The Court is in receipt of Defendant's <u>25</u> Consent Motion for an Extension of Time to File Defendant's Motion for Summary Judgment. Defendant's Motion is currently due July 15, 2019. But, because the initial Defense counsel has retired, the new Defense counsel requires additional time to become familiar with the case and draft a motion. This is Defendant's second motion for an extension. Defendant's Motion is GRANTED. Defendant is ORDERED to file its Motion for Summary Judgment by SEPTEMBER 6, 2019; Plaintiff its Response by OCTOBER 4, 2019; and Defendant its Reply by OCTOBER 18, 2019. Signed by Judge Colleen Kollar-Kotelly on 7-9-2019. (lcckk3) (Entered: 07/09/2019)
07/09/2019		Set/Reset Deadlines: Defendant's Summary Judgment Motion due by 9/6/2019. Response to Motion for Summary Judgment due by 10/4/2019. Reply to Motion for Summary Judgment due by 10/18/2019. (dot) (Entered: 07/11/2019)
07/11/2019	<u>26</u>	Consent MOTION to Modify <i>July 9, 2019 Scheduling Order</i> by DEPARTMENT OF HEALTH AND HUMAN SERVICES (Truong, John) (Entered: 07/11/2019)
07/11/2019		MINUTE ORDER. The Court is in receipt of Defendant's <u>26</u> Consent Motion to Modify the Scheduling Order in Part. Currently, Defendant's Motion for Summary Judgment is due September 6, 2019. Defendant asks that the Court modify the schedule so that the Motion is due September 13, 2019 as defense counsel will be out of the office from August 21, 2019 to September 9, 2019. Defendant reports that the remaining deadlines do not need to be changed. Defendant's Motion is GRANTED. Defendant's Motion for Summary Judgment is due SEPTEMBER 13, 2019. Signed by Judge Colleen Kollar-Kotelly on 7/11/2019. (lcckk3) (Entered: 07/11/2019)
07/11/2019		Set/Reset Deadlines: Defendant's Summary Judgment Motion due by 9/13/2019. (dot) (Entered: 07/12/2019)
09/12/2019	<u>27</u>	Consent MOTION to Modify <i>Scheduling Orders issued on July 9 and July 11, 2019</i> by DEPARTMENT OF HEALTH AND HUMAN SERVICES (Truong, John) (Entered: 09/12/2019)
09/13/2019		MINUTE ORDER. The Court is in receipt of Defendant's <u>27</u> Consent Motion to Modify the Court's Scheduling Orders. This is Defendant's second motion for an extension. Currently, Defendant's Motion for Summary Judgment is due September 13, 2019. Defendant asks that the Court modify the schedule so that the Motion is due September 30, 2019. Defense counsel was out of the office for a period of time and underestimated the time needed to work with the agency to develop an appropriate Vaughn index and declarations. Defendant's Motion is GRANTED. Defendant's Motion for Summary Judgment is due SEPTEMBER 30, 2019; Plaintiff's Opposition is due OCTOBER 18, 2019; and Defendant's Reply is due NOVEMBER 1, 2019. Signed by Judge Colleen Kollar-Kotelly on 9-13-2019. (lcckk3) (Entered: 09/13/2019)
09/13/2019		Set/Reset Deadlines: Defendant's Summary Judgment Motion due by 9/30/2019. Response to Motion for Summary Judgment due by 10/18/2019. Reply to Motion for Summary Judgment due by 11/1/2019. (dot) (Entered: 09/17/2019)
09/30/2019	<u>28</u>	MOTION for Extension of Time to <i>File Motion for Summary Judgment</i> by DEPARTMENT OF HEALTH AND HUMAN SERVICES (Truong, John) (Entered: 09/30/2019)
10/01/2019		MINUTE ORDER. The Court is in receipt of Defendant's <u>28</u> Motion for Extension of Time to file Motion for Summary Judgment. This is Defendant's third motion for an extension. Defendant's Motion for Summary Judgment was due September 30, 2019. Defendant asks that the Court modify the schedule so that the Motion is due October 7, 2019. In working with agency counsel, Defense counsel discovered that it needed to rectify three document productions. Defense counsel is currently working with agency counsel to rectify the errors and to produce the documents as soon as possible. In addition, Defense counsel is working to narrow certain issues for summary judgment briefing. Defendant's Motion is GRANTED nunc pro tunc. Defendant's Motion for Summary Judgment is due OCTOBER 7, 2019. Signed by Judge Colleen Kollar-Kotelly on 10-1-2019. (lcckk3) (Entered: 10/01/2019)

10/01/2019		Set/Reset Deadlines: Defendant's Summary Judgment Motion due by 10/7/2019. (dot) (Entered: 10/01/2019)
------------	--	---